IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRI. APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 31 OF 2005

Rahul Govind Sharma
(Presently at Nasik Road
Central Prison, Nasik). ... Petitioner

v/s

1. The State of Maharashtra
through its Home Ministry,
Madame Cama Road,
Mumbai - 400 032.

2. Officer-in-charge,
Colaba Police Station, Mumbai. ... Respondents

Mr. Maharukh Adenwalla & Dr. Yug Mohit Chaudhary for the petitioner.

Mr. D.S. Mhaispurkar, A.P.P. for the respondents.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: 2ND MARCH, 2005

ORAL JUDGMENT (Per Khandeparkar, J.):

1. Heard. Perused the records.

2. Rule. By consent the rule is made returnable forthwith.

3. By the present petition, the petitioner challenges

the sentence imposed upon him in Sessions Case No. 827 of 2002 on the ground that no such sentence could have been imposed in accordance with the provisions of law applicable to the petitioner considering the fact that he was juvenile within the meaning of the said expression under the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the said Act") on the date on which the offence is established to have been committed by the petitioner.

4. Few facts relevant for the decision are that:- C.R. No. 119 of 2002 came to be registered at Colaba Police Station on 30.4.2002 on the ground of assault on one Siddheshwar Rai by the petitioner. The petitioner was arrested by the police on 1.5.2002. He was detained in police custody till 15.5.2002. Siddheshwar Rai expired on 8.5.2002 and Sec. 302 of I.P.C. was added to the complaint against the petitioner. The petitioner was transferred to the Mumbai Central Prison on 15.5.2002. The proceedings relating to the offence against the petitioner was committed to the Court of Sessions on 20.8.2002 and was registered as Case No. 827 of 2002. On 2.1.2003 charges were framed which included charge under Sec. 302 of the I.P.C. against the petitioner. The petitioner was assigned a lawyer under Legal Aid

scheme on 18.2.2003 and on conclusion of trial, the statement under Sec. 313 of Cr.P.C. of the petitioner was recorded on 16.11.2004. By judgment and order dated 29.11.2004, the petitioner was convicted under Sec. 302 of the I.P.C. and sentenced to life imprisonment.

5. It is the contention of the petitioner that the petitioner was of about 16 years of age when the offence is stated to have been committed i.e. on 30.4.2002 and despite informing about the said age to the arresting officer, the petitioner was wrongly shown as of 19 years of age in the remand application as well as in the chargesheet filed by the second respondent. It is further contention of the petitioner that no test or the enquiry for age determination was conducted during the hearing of the matter even before the Sessions Court. It is his further case that when he was produced for remand before the learned Metropolitan Magistrate, he was never questioned about his age either by the Magistrate or any member of the investigating agency. It is also his further case that when the charges in relation to the acquisition of murder under Sec. 302 were framed against him alongwith other two co-accused, he was neither represented by a lawyer nor any legal assistance was provided to him. It was only on 18.2.2003 after framing

of charges that the lawyer under legal aid service was appointed to represent the petitioner in the said sessions case. It is his further case that, at the time when the statement under Sec. 313 of Cr.P.C. was recorded on 16.11.2004 he was asked about his age and he had informed the Trial Judge that he was 19 years' old and that the learned Trial Judge had recorded his age accordingly as of 19 years'.

6. In the back ground of facts disclosed above, the learned advocate appearing for the petitioner, drawing attention to the various provisions of the said Act and placing reliance in the decision of the Apex Court in the matter of **Gopinath Ghosh v/s State of West Bengal, reported in A.I.R. 1984 SC 237 and Bhola Bhagat v/s State of Bihar, reported in (1997) 6 SCC 720,** as well as of the Division Bench of this Court in the case of **Umesh Dukhan Mandal v/s State of Maharashtra & anr., reported in 2004 ALL. MR. (Cri.) 2137,** submitted that the records apparently disclose that on the date of occurrence of the offence, the petitioner was juvenile within the meaning of the said expression under the said Act and, therefore, he ought to have been dealt with in accordance with the provisions of the said Act and under no circumstances he could have been convicted for life

imprisonment. Specific attention was drawn to Sections 15 and 16 of the said Act.

7. The 313 statement of petitioner recorded on 16.11.2004 apparently discloses his age to be of 19 years on the said day. Undisputedly, the day of occurrence of the offence was 30.4.2002. Obviously, the petitioner was revealed to be of the age of 16 years and 2 months on the day when offence was committed. Obviously, therefore, even prior to the passing of the sentence, it was revealed to the Sessions Judge that the petitioner was juvenile on the day when the offence was committed by the petitioner. That apart, the reports nowhere disclose that the petitioner was ever subjected to the medical check-up to ascertain his age either by the investigating agency or by the learned Magistrate or even by the learned Sessions Judge either at the stage of remand or when the chargesheet was filed disclosing the age of the petitioner as of 19 years, or any time thereafter.

8. Sec. 2(k) of the said Act defines the term "juvenile" to mean a person who has not completed eighteenth year of age. Sec. 2(l) thereof defnies the expression "juvenile in conflict with law" means a juvenile who had committed the offence. Sec. 2(g) of

the said Act defines the expression "competent authority" to mean in relation to the children in need of care and protection a Committee and in relation to juveniles in conflict with law a Board. Section 2(c) thereof defines

the "Board" to mean a Juvenile Justice Board constituted under Sec.4 of the said Act. Sec. 4 of the said Act empowers the State Government to constitute Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law under the said Act. Sec. 6 of the said Act deals with the powers of Juvenile Justice Board and sub-section (1) thereof empowers the Board constituted for a district to deal exclusively with all proceedings under the said Act relating to juvenile in conflict with law. Sec. 15 enumerates the orders which may be passed regarding the juvenile by the Board, whereas Sec.16 specifies the orders which may not be passed against juvenile. Sub-sec.(1) of Sec.16 provides that notwithstanding anything to the contrary contained in any other law for time being in force, no juvenile in conflict with law shall be sentenced to death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security, provided that where a

juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under the said Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government. Sub-section (2) of Sec. 16 provides that, on receipt of a report from a Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit, provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed. It is to be noted that the most stringent measure to be taken in case of any juvenile in conflict with law is prescribed under Sec. 15 (1)(g) and it provides that where a Board is satisfied on enquiry that juvenile has committed an offence, then notwithstanding anything to the contrary

contained in any other law for the time being in force, the Board may, if it so thinks fit to be sent to the special home, (i) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years; and (ii) in case of any other juvenile for the period until he ceased to be a juvenile, provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit. At the same time, it is also to be noted that Sec.18 of the said act prohibits joint proceeding of juvenile and person not a juvenile. Sub-sec. (1) of Sec. 18 specifically provides that, notwithstanding anything contained in Sec. 223 of the Code of Criminal Procedure, 1973 or in any other law for the time being in force, no juvenile shall be charged with or tried for any offence together with a person who is not a juvenile. Sub-sec. (2) further provides that, if a juvenile is accused of an offence for which under Sec. 223 of the Code of Criminal Procedure, 1973 or any other law for the time being in force, such juvenile and any person who is not a juvenile would, but for the prohibition contained in sub-section (1), have been charged and tried together, the Board taking cognizance

of that offence shall direct separate trials of the juvenile and the other persons.

9. Sec.7 of the said Act deals with the procedure to be followed by a Magistrate not empowered under the Act. Sub-sec. (1) thereof provides that, when any Magistrate not empowered to exercise the powers of a Board under the said Act is of the opinion that a person brought before him under any of the provisions of the said Act (other than for the purpose of giving evidence), is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child and the record of the proceeding to the competent authority having jurisdiction over the proceeding. Sub-sec. (2) provides that the competent authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the juvenile or the child had originally been brought before it. Likewise, Sec. 10 deals with the procedure to be followed by the police on apprehension of juvenile in conflict with law. Sub-section (1) thereof refers that, as soon as juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer who shall immediately report the matter to a member of the Board.

Sub-section (2) provides that the State Government may make rules consistent with the said Act inter-alia to provide for persons through whom (including registered voluntary organisations) any juvenile in conflict with law may be produced before the Board; and to provide the manner in which such juvenile may be sent to an observation home.

10. Sec. 12 deals with right of bail to the juvenile. Sub-section (1) thereof provides that, when any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. Sub-section (3) thereof provides that, when such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an

observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

11. It is also to be noted that the said Act specifically provides an outer limit for disposal of inquiry by the Board regarding juvenile. It provides that where a juvenile having been charged with the offence before a Board, the Board shall hold the inquiry in accordance with the provisions of the said Act and may make such order in relation to the juvenile as it deems fit, provided that an inquiry under this section shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.

12. Bare perusal of the above provisions of the law reveal that the same elaborately deal with the right of juvenile offenders and also prescribe detailed procedure to be followed from the time the juvenile in conflict with law is apprehended by the police till the inquiry against such person is concluded, as also steps to be taken to ensure proper rehabilitation of juvenile

involved in commission of an offence.

13. The very object of the said Act is to provide proper care, protection and treatement to the juveniles by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the said enactment, as is revealed from its preamble. The statement of objects and reasons of the Act disclose that the justice system which is available for adults is not considered suitable for being applied to a juvenile and bearing in mind the urgent need for creating adequate infrastructure necessary for implementation of the legislation with the larger involvement with the informal systems specially, the family, friendly voluntary organisations and community that the said Act was brought on statute book. The Act came into force w.e.f. 1.4.2001 consequent to its publication in the notification No.SO.177-E dated 28.2.2001.

14. Sec. 68 of the said Act deals with the rule making power of the State Government and clause (v) of sub-section (2) of Sec. 68 empowers the Government to

make rules regarding the persons for whom the juvenile in conflict with law may be produced before the Board and the manner of sending such juvenile, to an observation home under sub-section (2) of Sec.10 of the said Act. The State Government has framed rules in exercise of powers under Sec. 68 for the said Act and they are called as the Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002 (hereinafter referred to as "the said rules"). Chapter II Rule 5 of the said rules deals with the procedure to be followed pursuant to juvenile in conflict in law is apprehended on account of commission of any offence. Sub-rule (1) of Rule 5 of the said chapter provides that, as soon as a juvenile in conflict with law is apprehended by police, the police shall place him under the charge of the Special Juvenile Police or the designated police officer. Rule 5 (2) of the said Chapter provides that juvenile should be brought by the concerned police officer to the Board within 24 hours of taking the charge of juvenile. The period required for journey shall be excluded from the above period of 24 hours and in case of delay in production before the Magistrate or the Board, the details of not doing so be recorded in the police diary or general diary. Sub-rule (4) of Rule 5 clearly prohibits juvenile to be kept in lock up of the police station or in jail

for the purpose of conducting the preliminary inquiries. Sub-rule (5) of Rule 5 further provides that no juvenile in conflict with law shall be handcuffed, chained or tied with ropes or any other material while producing him before the Board. Sub-rule (6) of Rule 5 requires the juvenile to be received, assessed and interviewed in a child friendly manner and home-like environment by the specially trained probation officers or designated or authorized social workers or police officers. Rule 6 deals with the procedure to be followed by the Board and sub-rule (5) thereof provides that, in every case concerning a juvenile, the Board shall either obtain (i) a birth certificate given by a corporation or a municipal authority; or (ii) a date of birth certificate from the school first attended; or (iii) matriculation or equivalent certificates, if available; and in the absence of any of such material, the medical opinion by a duly constituted Medical Board, subject to a margin of one year in deserving cases for the reasons to be recorded by such Medical Board. Sub-rule (7) thereof provides that, in case of any doubt with regard to the age of the juvenile, the Board shall pass an order in such cases after taking into consideration the medical opinion and such other evidence as may be available and then record the finding in respect of his age.

15. Chapter XVI of the said rules deals with the juvenile police unit. Rule 76(1) requires the State Government to appoint Special Juvenile Police Unit at the district and a Juvenile or a Child Welfare Officer shall be designated in term of Sec.63 of the Act, at the level of police station. Rule 77 (1) provides that, whenever a charge of a child is taken by the Police, the child shall be referred to the Juvenile/Child Welfare Officer for investigation, who in turn will after a preliminary enquiry arrange to produce the juvenile/child before the Competent Authority as the case may be. Sub-rule (2) provides that the child should be treated with decency and dignity while doing investigation enquiry, search etc. Sub-rule (3) provides that a girl shall be subjected to search by a female staff. Sub-rule (6) provides that a juvenile/child shall be produced before the competent authority within a period of 24 hours of taking charge excluding the journey period. Sub-rule (7) provides that the police shall strictly adhere to the guidelines of the Supreme Court of India and High Courts while dealing with a juvenile/child.

16. As observed above, the provisions contained in the said Act and the said Rules, therefore, reveal that

whenever a juvenile in conflict with law is apprehended on account of his involvement in any offence, he is required to be dealt with in accordance with the provisions of the said Act and said rules and in no other manner. Whenever there is any doubt about the age of the person either claiming as juvenile or who appears to be a juvenile, certainly it is the obligation of the person apprehending such juvenile or child to ascertain his or her age in the manner provided under the said Act and the said rule made thereunder and in case of any doubt even in relation to the procedure to be followed in that regard, it would be duty of such police officer or whoever apprehends child or juvenile to take the medical opinion as regards the age of such child or juvenile. In cases where the claim is made regarding age of the person being of 17 to 19 years, certainly it would be the duty of the person apprehending such person to ascertain his correct age in that regard and follow the provisions of the said Act and Rules as the facts of the case may demand.

17. In fact, apart from elaborate provisions of law made under the State Act and the said Rules, the procedure to be followed in cases where persons of the age of 18 years or below are involved is well settled by the decisions of

the Apex Court in the matters of **Gopinath Ghosh** and **Bhola Bhagat.** Undoubtedly, earlier, the persons were considered to be juvenile upto the age of 16 years in case of male persons, whereas, in case of female it was 18 years. Subsequently the age for male as well as female is fixed as 18 years and the same provision of law is in force till this day.

18. While dealing with the provisions of West Bengal Children Act, 1959 and cases arising thereunder, the Apex Court in Gopinath Ghosh's case has held that where a juvenile delinquent is arrested, he/she has to be produced before a juvenile court and if no juvenile court is established for the area, amongst others, the Court of Sessions will have powers of a juvenile court. Such a juvenile delinquent ordinarily has to be released on bail irrespective of the nature of the offence alleged to have been committed unless it is shown that there appears reasonable grounds for believing that the release is likely to bring him under the influence of any criminal or expose him to moral danger or defeat the ends of justice.

19. Further, in **Bhola Bhagat's** case, it was ruled by the Apex Court that, when a plea is raised on behalf of the

accused that he is either a child or juvenile, then keeping in view the beneficial nature of the socially-oriented legislation, it is an obligation of the Court to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the provisions of such beneficial statutes to an accused. It is the duty of the Court to hold an enquiry and to ascertain the age of such person. It should not be forgotten that the Courts are required to deal with such cases with more sensitivity, as otherwise the object of the Act would be frustrated. It pains us to note that inspite of clear message sent by the Apex Court to be careful and vigilant in relation to the obligations of the Court while dealing with the matters wherein the persons of the tender age are involved, the Court below at times fail to perform their obligations in that regard and the case in hand is one of such cases.

20. As observed above, though the remand application discloses the age of the petitioner to be of 19 years, the records nowhere disclose that the investigation agency had made any effort to verify the age of the petitioner. It is well settled law that there is always a margin of error in age to the extent of two years on

either sides when the age of a person is to be ascertained on radiological examination. In fact, there is a clear ruling in that regard by the Apex Court in **Jaya Mala v/s Home Secretary, Government of Jammu and Kashmir & ors., reported in A.I.R. 1982 SC 1297,** wherein the detenu was arrested and tendered on 18th October, 1981. The report by the expert was dated 3.5.1982 i.e. nearly 7 months after the detention. It was further observed that, growing in age day by day is an involuntary process and the anatomical changes in the structure of the body continuously occur. With this observation it was held that,

> "It is notorious and one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side."

21. Besides, the Apex Court in the case of **Rajinder Chandra v/s State of Chhattisgarh & anr., reported in (2002) 2 SCC 287**, while reiterating its earlier decision in **(2000) 5 SCC 488** held that,

> "While dealing with the question of determination of the age of the accused, for the purpose of

finding out whether he is a juvenile or not, hyper-technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the Court should lean in favour of holding the accused to be a juvenile in borderline cases."

22. Considering the law laid down by the Apex Court and the provisions of the said Act and Rules framed thereunder, it is to be held that whenever there is either doubt as regards the age of the person arrested or apprehended by the police on account of his involvement in any offence or when the age factor of such person is described by the person arrested, it would be the duty of the police officer arresting the person to ascertain the age either by following various methods provided under the said Act and Rules framed thereunder and, if not possible that by way of obtaining the medical opinion in that regard. Undoubtedly, if the medical examination is not possible immediately on apprehension of the person, such information should be obtained within a period of 24 hours from the time of his apprehension and in case of impossibility to do so, the reason therefor to be recorded

in writing and the same should be obtained at the earliest possible. But under no circumstances the provisions of the said Act and Rules framed thereunder which are essentially a beneficial legislation for the children and juvenile should be allowed to be flouted or frustrated in any manner.

23. As observed above, the application for remand though disclosed the age of 19 years, no efforts were made by the investigating agency to ascertain the exact age of the petitioner at any point of time, either at the time of obtaining the remand or even thereafter.

24. Unfortunately, the learned Magistrate before whom the petitioner was produced requesting for remand in the matter, also did not appear to have applied his mind, neither followed the statutory provisions comprised under the said Act nor the ruling of the Apex Court clearly requiring the Courts dealing with such persons to be more

sensitive and careful to ensure the proper implementation of the beneficial legislation comprised under the said Act and the Rules made thereunder.

25. Considering the fact that in the remand application,

the age of the petitioner was stated as 19 years, it was necessary for the Magistrate to verify the age of the petitioner by referring the petitioner to the medical examination as no proof regarding the age of the petitioner was produced on record. We are aware that the said Act and Rules had not come into force at the time when the petitioner was produced before the Magistrate with the remand application. However, the Criminal Manual which is in force since 1976 clearly required under Clause 10 thereof of Chapter VI that the Judges and Magistrates were to apprise themselves of the provisions of the Bombay Children (Amendment) Act, 1976 and they were required to take special care to see that young persons who were charged with the offences were not deprived of the benefits of Bombay Children Act, 1948. Besides, the Apex Court in Gopinath Ghosh's case had clearly held that,

> "We must take notice of developed situation in recent months in this Court that the contention about age of a convict and claiming the benefit of the relevant provisions of the Act dealing with juvenile delinquents prevalent in various States is raised for the first time in this Court and this Court is required to start the inquiry afresh. Ordinarily this Court would be reluctant

to entertain a contention based on factual averments raised for the first time before it. However, the Court is equally reluctant to ignore, overlook or nullify the beneficial provisions of a very socially progressive statute by taking shield behind the technicality of the contention being raised for the first time in this Court. A way has therefore to be found from this situation not conducive to speedy disposal of cases and yet giving effect to the letter and the spirit of such socially beneficial legislation. We are of the opinion that whenever a case is brought before the Magistrate and the accused appears to be aged 21 years or below, before proceeding with the trial or undertaking an inquiry, an inquiry must be made about the age of the accused on the date of the occurrence. This ought to be more so where special Acts dealing with juvenile delinquent are in force. If necessary, the Magistrate may refer the accused to the Medical Board or the Civil Surgeon, as the case may be, for obtaining credit-worthy evidence about age. The Magistrate may as well call upon accused also to lead evidence about his age. Thereafter, the learned

Magistrate may proceed in accordance with law."

Evidently, it was as long back as in 1982 that the Apex Court had in no uncertain terms required the Magistrates and the Courts dealing with the person who appear to be the age of 21 years or below to ascertain the age of such person before proceeding to deal with such person in relation to the offence for which he is charged or accused of. Undoubtedly, the said decision was reported in the year 1984, nearly 16 years prior to the date of incident in the case in hand. It is rather unfortunate that the Magistrate, in the case in hand, did not bother to act in accordance with the mandate issued by the Apex Court.

26. The matter does not end with the lapse on the part of the Magistrate; rather it was carried forward even at the stage of the trial and even at the time of passing of the sentence by the Sessions Court. The learned Addl. Sessions Judge at Mumbai who dealt with the matter apparently, was fully made aware by the petitioner while recording 313 statement on 16.11.2004 that he was of 19 years of age on the said day. The date of offence as

already stated above was 30.4.2002. Simple arithmatical calculation could have apparently revealed to the Addl.

Sessions Judge that the petitioner was not more than 16 years and two months of age on the day of the commission of the offence. Obviously he was, as a matter of right entitled for the necessary benefit of statutory provisions under the said Act and the said Rules. Untofrunately, the Addl. Sessions Judge, Mumbai, on 29.11.2004 totally ignoring the provisions of the said Act and the said Rules, proceeded to deliver the judgment and imposed sentence of life imprisonment upon the petitioner. In fact the mistake which was committed by the learned Addl. Sessions Judge on the day of disposal of the Sessions Case No. 827 of 2002 was also committed by the concerned Sessions Judge on the day when the charge was framed. As already stated above, Sec. 18 clearly prohibits joint trial of the juvenile with the non-juveniles. It was the duty of the Sessions Judge at the time of framing of the charge to ascertain the age of the accused persons including the petitioner and in the absence of necessary material in support of the claim of the petitioner, if any, and the doubt about he being the juvenile, to refer to him for medical examination to ascertain the age and only thereupon to proceed in accordance with the provisions of law.

27. Serious lapses on the part of the investigating agency, the learned Metropolitan Magistrate and the Addl.

Sessions Judge, have not only caused prejudice to the petitioner but also resulted in wastage of valuable public time apart from non-compliance of the mandatory provisions by the law enforcing agency. It is, therefore, necessary to give necessary directions to all the Courts below as well as the police machinery of the State to ensure henceforth due implementation and enforcement of the provisions of the said Act and the said Rules without fail and to ensure that the object of the said beneficial legislation is not allowed to be frustrated or defeated in any manner. Proper care is expected from all such agencies and the institutions and the Government to ensure that necessary efforts is made to take appropriate and prompt steps to provide necessary infrastructure and opportunity for reformation of juvenile and not to allow them to turn hardened criminals. We hope that the government would do the needful.

28. Reverting to the facts of the case, once it is apparent that on the date of the commission of offence the petitioner was juvenile and he has been convicted and sentenced under Sec. 302 of the I.P.C. of life imprisonment, we are left with no other alternative than to follow the law laid down by the Apex court in such situation and also followed by the Division Bench in the

case of **Umesh Dukhan Mandal v/s State of Maharashtra & anr., reported in 2004 ALL MR (Cri) 2137.**

29. Under the circumstances, therefore, the petition is allowed. While refraining ourselves from interfering with the judgment in relation to the conviction in judgment dated 29.11.2004 passed by the learned Addl. Sessions Judge, Mumbai, the sentence of life imprisonment imposed against the petitioner who was accused No.3 in the Sessions Case No. 827 of 2002, is hereby quashed and the petitioner having already attained the age of majority, is ordered to be released forthwith, unless required in any other case or offence.

30. As far as the conviction and sentence imposed on other accused in the said criminal case is concerned, the same is not altered or interfered with in any manner in this judgment.

Rule is made absolute in above terms with no order as to costs.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)